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A Nonparty At Fault Must Have a Duty to Plaintiff

The Michigan Supreme Court recently resolved a conflict between two Court of Appeals cases regarding nonparties at fault. One held that a nonparty must owe a duty to the plaintiff to be a nonparty at fault, yet the other held that a nonparty with no duty to the plaintiff could still be identified as a nonparty at fault.

In the Supreme Court case, a defendant was dismissed by the trial court because it did not owe a duty to the plaintiff. The remaining defendant thereafter filed a notice identifying the dismissed party as a nonparty at fault. The trial court then struck the nonparty notice.

The correct Michigan negligence law requires proof of (1) duty; (2) breach of that duty; (3) causation, both in fact and proximate; and (4) damages. A legal duty is required before consideration of negligence. As the court stated: "Without owing a duty to the injured party, the "negligent" actor could not have proximately caused the injury and could not be at "fault" for purposes of the comparative fault statutes."

This is a significant ruling because a nonparty at fault can be assessed a percentage of damages by the trier of fact, thus reducing or eliminating damages owed by a named defendant. On the basis of this ruling, entities with a defense such as governmental immunity cannot be named as a nonparty even though their actions may have been a cause of damages since, their actions cannot be a "proximate" cause of damages.

Even though parties without a duty are precluded from being identified as a nonparty at fault, named defendants may still be able to argue that they did not proximately cause the damages due to the acts of the nonparty. The only difference is that the trier of fact (i.e. jury) cannot

"Always do more than is required of you." George S. Patton

assign fault to the nonparty on the jury verdict form.

Release Applies to One Accident Only

The plaintiff's decedent was struck by one vehicle while attempting to cross a street and thrown into another lane. She remained alive but was then hit by another vehicle and died as a result of her injuries. Without filing suit, the estate settled with one driver's insurance company and executed a release. Subsequently, the estate sued the other driver and a bar in which he had been drinking. The estate also sued an insurance company for underinsured benefits.

The insurer filed a summary disposition motion on the basis that the release language precluded the claim against it. The paraphrased language released all other persons, insurers, firms or corporations who are or might be liable for injuries arising from an accident which occurred on October 28, 2006. The trial court granted the motion.

In an unpublished opinion, the Court of Appeals reversed holding that the release language referred to only "one" accident and there were clearly two. Although only minutes passed between the two impacts, there were clearly two accidents - not an uninterrupted succession of strikes. The release did not bar the lawsuit.

Many motor vehicle accident cases will involve a number of defendants but only one accident. If the plaintiff in that type of case settles with one defendant and executes a release which contains similar language to that addressed here, it is likely that the release will preclude the claim against the other defendants. Most plaintiff attorneys will ask that such language be removed from the release. However, language can be crafted to release others who may be responsible in some form, i.e. agents, for the released defendants' liability or indemnity without releasing other defendants.

"Tomorrow is the most important thing in life... it puts itself in our hands and hopes we've learnt something from yesterday." John Wayne

Motorcycle Operator Recovers No-fault Benefits From Out-of State Insurer

The plaintiff motorcycle operator was injured in an accident involving an automobile. The automobile was insured under a policy issued in Washington state. The Washington state insurer had filed a 3163 certification, subjecting it to Michigan no-fault act provisions. The plaintiff did not have a no-fault benefit insurance policy but his parents, with whom he resided, did. Both insurers refused to pay no-fault benefits so the plaintiff filed suit.

Cross motions for summary disposition by the insurers resulted in the trial court ruling that the Washington state policy insuring the involved auto was the first priority insurer.

Although cases involving the interpretation of 3163 generally support the argument that the statute imposes benefit liability on out-of-state insurers who have filed a 3163 certificate only where their own insured is injured and claiming benefits, the Court of Appeals ruled that 3163 certificate applies explicitly to "any" accidental bodily injury or property damage occurring in Michigan. The statute contains no language limiting the out-of state insurer's liability to damages incurred only by its insured.

The statute also explicitly provides that, not only are the 3163 insurer and its insureds protected by the rights and immunities of the Michigan No-fault Act, claimants are also protected and have the right to claim no-fault benefits from the 3163 insurer.

That being the case, the court next considered the order of priority for the payment of no-fault benefits for an injured motorcycle operator or passenger where there is evidence of the involvement of a motor vehicle. The insurer of the owner or registrant of the involved motor vehicle is in first in priority. Under the facts of this case, the trial court was correct. The Washington state insurer that insured the involved motor vehicle was obligated to pay no-fault benefits to the injured motorcycle operator.

"Do not go where the path may lead, go instead where there is no path and leave a trail." Ralph Waldo Emerson

"If you into a wall...figure out how to climb it, go through it, or work around it." Michael Jordan

One-Year-Back Rule Is Not a Statute of Limitations

A unit of the State of Michigan filed suit against a no-fault insurer for reimbursement of certain no-fault benefits. The insurer sought to limit recovery to benefits incurred within one year of when the complaint was filed and moved for summary disposition on the basis of the one-year-back rule contained in 3145 of the no-fault act.

The arguments centered on two alternative statutory provisions. One held that actions brought in the name of the state of Michigan to recover the cost of medical care are not subject to the statute of limitations and may be filed at any time without limitation. On the other hand, 3145 provides that a lawsuit for no-fault benefits must be filed within one year of the date of loss or, if notice of the claim has been provided, an action may be filed at any time within one year of the most recent incurred benefit. However, the claimant cannot recover benefits incurred more than one year before the date on which the lawsuit was filed.

Two seemingly conflicting cases were considered by the trial court and the court ultimately decided that the one-year-back rule did not apply. The Court of Appeals, reversed, ruling that there was no conflict between the two cases. One involved only the one year statute of limitations whereas the other involved only the damages limiting portion of 3145. The Court of Appeals concluded that the one-year-back rule of 3145 did apply and summary disposition was appropriate.

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